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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 JALINSKI ADVISORY GROUP,
12 INC.,

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14 Plaintiff,

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16 v.

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18 FINANCIAL ARCHITECTS, INC.
19 and LARRY STEINBERG,

20
21 Defendants.
22

Case No.: 2:18-cv-06828-SVW (FFMx)

PROTECTIVE ORDER –
CONFIDENTIAL AND HIGHLY
CONFIDENTIAL DESIGNATIONS
PURSUANT TO STIPULATION

Action Filed: August 8, 2018

23 To facilitate the exchange of information and documents which may be
24 subject to confidentiality limitations on disclosure due to federal laws, state laws
25 (including with respect to trade secrets), contractual confidentiality limitations and
26 privacy rights,

27 **IT IS HEREBY STIPULATED** by and between plaintiff Jalinski Advisory
28 Group, Inc. and defendants Financial Architects, Inc. and Larry Steinberg (each, a

1 “Party,” and collectively, the “Parties”), by and through their respective counsel of
2 record, who respectfully request the Court to order, as follows:

3 1. This Stipulation and Protective Order is adapted from the form
4 protective order available at <http://www.lacourt.org/division/civil/CI0043.aspx> and
5 approved for use by the Los Angeles County Superior Court as consistent with both
6 California and federal law.

7 2. In this Stipulation and Protective Order, the words set forth below shall
8 have the following meanings:

9 a. “Proceeding” means the above-captioned proceeding.

10 b. “Court” means the Hon. Stephen V. Wilson, the Hon. Frederick
11 F. Mumm, or any other judge or magistrate to which this Proceeding may be
12 assigned, including Court staff participating in such proceedings.

13 c. “Confidential” means any Documents, Testimony or
14 Information which is in the possession of a Designating Party who believes in good
15 faith that such Documents, Testimony or Information is entitled to confidential
16 treatment under applicable law.

17 d. “Confidential Materials” means any Documents, Testimony or
18 Information, as defined below, designated as “Confidential” pursuant to the
19 provisions of this Stipulation and Protective Order.

20 e. “Highly Confidential” means any Information which belongs to
21 a Designating Party who believes in good faith that the information is confidential
22 to or a trade secret of, and not generally known other than to, the Designating Party,
23 and that Disclosure of such information to another Party or non-Party would create
24 a substantial risk of serious financial or other injury that cannot be avoided by less
25 restrictive means.

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1 f. “Highly Confidential Materials” means any Documents,
2 Testimony or Information, as defined below, designated as “Highly Confidential”
3 pursuant to the provisions of this Stipulation and Protective Order.

4 g. “Designating Party” means the Party that designates
5 Documents, Testimony or Information, as defined below, as “Confidential” or
6 “Highly Confidential.”

7 h. “Disclose” or “Disclosed” or “Disclosure” means to reveal,
8 divulge, give, or make available Materials, or any part thereof, or any Information
9 contained therein.

10 i. “Documents” means (i) any “writing,” “recording,”
11 “photograph,” “original” and “duplicate” as those terms are defined by Fed. R.
12 Evid. 1001, which have been produced in discovery in this Proceeding by any
13 person or entity, and (ii) any copies, reproductions or summaries of all or any part
14 of the foregoing.

15 j. “Information” means the content of Documents or Testimony.

16 k. “Testimony” means all depositions, declarations or other
17 testimony taken or used in this Proceeding.

18 3. The Designating Party has the right to designate as “Highly
19 Confidential” only the non-public Documents, Testimony or Information that the
20 Designating Party in good faith believes would create a substantial risk of serious
21 financial or other injury, if Disclosed to another Party or non-Party, and that such
22 risk cannot be avoided by less restrictive means.

23 4. The entry of this Stipulation and Protective Order does not alter, waive,
24 modify, or abridge any right, privilege, or protection otherwise available to any
25 Party with respect to the discovery of matters, including but not limited to any
26 Party’s right to assert the attorney-client privilege, the attorney work product
27 doctrine, or other privileges, or any Party’s right to contest any such assertion.
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1 5. Any Documents, Testimony, or Information to be designated as
2 “Confidential” or “Highly Confidential” must be clearly so designated before the
3 Document, Testimony or Information is Disclosed or produced. The parties may
4 agree that a case name and number are to be part of the “Highly Confidential”
5 designation. The “Confidential” or “Highly Confidential” designation should not
6 obscure or interfere with the legibility of the designated Information.

7 a. For Documents (apart from transcripts of depositions or other
8 pretrial or trial proceedings), the Designating Party must affix the legend
9 “Confidential – Not for Use or Disclosure” or “Highly Confidential – For
10 Disclosure to Court, Attorneys and Experts Only” (each, a “Legend”) on each page
11 of any Document containing such designated material.

12 b. For Testimony given in depositions the Designating Party
13 may either: (i) identify on the record, before the close of the deposition, all
14 “Confidential” or “Highly Confidential” Testimony, by specifying all portions of
15 the Testimony that qualify as “Confidential” or “Highly Confidential”; or (ii)
16 designate the entirety of the Testimony at the deposition as “Confidential” or
17 “Highly Confidential” (before the deposition is concluded) with the right to identify
18 more specific portions of the Testimony as to which protection is sought within 30
19 days following receipt of the deposition transcript. In circumstances where portions
20 of the deposition Testimony are designated for protection, the transcript pages
21 containing “Confidential” or “Highly Confidential” Information may be separately
22 bound by the court reporter, who must affix to the top of each page the Legend as
23 instructed by the Designating Party.

24 c. For Information produced in some form other than Documents,
25 and for any other tangible items, including, without limitation, flash drives, compact
26 discs or DVDs, the Designating Party must affix in a prominent place on the exterior
27 of the container or containers in which the Information or item is stored the
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appropriate Legend. If only portions of the Information or item warrant protection, the Designating Party, to the extent practicable, shall identify the “Confidential” or “Highly Confidential” portions.

6. The inadvertent production by any of the undersigned Parties or non-Parties to the Proceedings of any Document, Testimony or Information during discovery in this Proceeding without a “Confidential” or “Highly Confidential” designation, shall be without prejudice to any claim that such item is “Confidential” or “Highly Confidential” and such Party shall not be held to have waived any rights by such inadvertent production. In the event that any Document, Testimony or Information that is subject to a “Confidential” or “Highly Confidential” designation is inadvertently produced without such designation, the Party that inadvertently produced the document shall give written notice of such inadvertent production within twenty (20) days of discovery of the inadvertent production, together with a further copy of the subject Document, Testimony or Information designated as “Confidential” or “Highly Confidential” (the “Inadvertent Production Notice”). Upon receipt of such Inadvertent Production Notice, the Party that received the inadvertently produced Document, Testimony or Information shall promptly destroy the inadvertently produced Document, Testimony or Information and all copies thereof, or, at the expense of the producing Party, return such together with all copies of such Document, Testimony or Information to counsel for the producing Party and shall retain only the “Confidential” or “Highly Confidential” materials. Should the receiving Party choose to destroy such inadvertently produced Document, Testimony or Information, the receiving Party shall notify the producing Party in writing of such destruction within ten (10) days of receipt of written notice of the inadvertent production. This provision is not intended to apply to any inadvertent production of any Document, Testimony or Information protected by attorney-client or work product privileges. In the event this provision conflicts with

any applicable law regarding waiver of confidentiality through the inadvertent production of Documents, Testimony or Information, such law shall govern.

7. If counsel for a Party receiving Documents, Testimony or Information in discovery designated as “Confidential” or “Highly Confidential” objects to such designation with respect to any or all such items, that counsel shall advise counsel for the Designating Party, in writing, of such objections, the specific Documents, Testimony or Information to which each objection pertains, and the specific reasons and support for such objections (the “Designation Objections”). Counsel for the Designating Party shall have thirty (30) days from receipt of the written Designation Objections to either (a) agree in writing to de-designate Documents, Testimony or Information pursuant to any or all of the Designation Objections and/or (b) file a motion with the Court seeking to uphold any or all designations on Documents, Testimony or Information addressed by the Designation Objections (the “Designation Motion”). Pending a resolution of the Designation Motion by the Court, any and all existing designations on the Documents, Testimony or Information at issue in such Motion shall remain in place. The Designating Party shall have the burden on any Designation Motion of establishing the applicability of its “Confidential” or “Highly Confidential” designation. If the Designation Objections are neither timely agreed to nor timely addressed in the Designation Motion, then such Documents, Testimony or Information shall be de-designated in accordance with the Designation Objection applicable to such material.

8. Access to and/or Disclosure of Confidential Materials shall be permitted only to the following persons or entities:

- a. The Court.
- b. Attorneys of record in the Proceeding and their affiliated attorneys, paralegals, clerical and secretarial staff employed by such attorneys who are actively involved in the Proceeding and are not employees of any Party;

provided, however, that each non-lawyer given access to Confidential Materials shall be advised that such materials are being Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order and that they may not be Disclosed other than pursuant to its terms.

c. Those officers, directors, partners, members, employees and agents of all non-designating Parties that counsel for such Parties deems necessary to aid counsel in the prosecution and defense of this Proceeding; provided, however, that prior to the Disclosure of Confidential Materials to any such officer, director, partner, member, employee or agent, counsel for the Party making the Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, and shall explain that such person is bound to follow the terms of the Order.

d. Court reporters in this Proceeding (whether at depositions, hearings, or any other proceeding).

e. Any deposition, trial, or hearing witness in the Proceeding who previously has had access to the Confidential Materials, or who is currently or was previously an officer, director, partner, member, employee or agent of an entity that has had access to the Confidential Materials.

f. Any deposition or non-trial hearing witness in the Proceeding who previously did not have access to the Confidential Materials; provided, however, that each such witness given access to Confidential Materials shall be advised that such materials are being Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order and that they may not be Disclosed other than pursuant to its terms.

g. Mock jury participants, provided, however, that prior to the Disclosure of Confidential Materials to any such mock jury participant, counsel for the Party making the Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, shall explain that such person is bound to follow

1 the terms of such Order, and shall secure the signature of such person on a statement
2 in the form attached hereto as Exhibit A.

3 h. Outside experts or expert consultants consulted by the
4 undersigned Parties or their counsel in connection with the Proceeding, whether or
5 not retained to testify at any oral hearing; provided, however, that prior to the
6 Disclosure of Confidential Materials to any such expert or expert consultant,
7 counsel for the Party making the Disclosure shall deliver a copy of this Stipulation
8 and Protective Order to such person, shall explain its terms to such person, and shall
9 secure the signature of such person on a statement in the form attached hereto as
10 Exhibit A. It shall be the obligation of counsel, upon learning of any breach or
11 threatened breach of this Stipulation and Protective Order by any such expert or
12 expert consultant, to promptly notify counsel for the Designating Party of such
13 breach or threatened breach.

14 i. Any other person or entity that the Designating Party agrees to
15 in writing.

16 9. Access to and/or Disclosure of Highly Confidential Materials shall be
17 permitted only to the following persons or entities:

18 a. Trial Counsel for the Parties, their partners and associates, and
19 staff and supporting personnel of such attorneys, such as paralegal assistants,
20 secretarial, stenographic and clerical employees and contractors, and outside
21 copying services, who are working on this Proceeding (or any further proceedings
22 herein) under the direction of such attorneys and to whom it is necessary that the
23 Highly Confidential Materials be Disclosed for purposes of this Proceeding. Such
24 employees, assistants, contractors and agents to whom such access is permitted
25 and/or Disclosure is made shall, prior to such access or Disclosure, be advised of,
26 and become subject to, the provisions of this Protective Order.

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1 b. Outside experts or expert consultants consulted by the
2 undersigned Parties or their counsel in connection with the Proceeding, whether or
3 not retained to testify at any oral hearing; provided, however, that prior to the
4 Disclosure of Highly Confidential Materials to any such expert or expert consultant,
5 counsel for the Party making the Disclosure shall deliver a copy of this Stipulation
6 and Protective Order to such person, shall explain its terms to such person, and shall
7 secure the signature of such person on a statement in the form attached hereto as
8 Exhibit A prior to the Disclosure of Highly Confidential Materials. It shall be the
9 obligation of Trial Counsel, upon learning of any breach or threatened breach of
10 this Stipulation and Protective Order by any such expert or expert consultant, to
11 promptly notify Trial Counsel for the Designating Party of such breach or
12 threatened breach.

13 c. Any person who authored, received, saw or was otherwise
14 familiar with Documents, Testimony or Information or thing designated “Highly
15 Confidential,” including any person otherwise familiar with the Highly Confidential
16 Information contained therein, but only to the extent of that person’s prior
17 familiarity with the Highly Confidential Information.

18 d. Court reporters in this Proceeding (whether at depositions,
19 hearings, or any other proceeding).

20 e. The Court.

21 10. Confidential Materials and Highly Confidential Materials shall be used
22 by the persons or entities receiving them only for the purposes of preparing for,
23 conducting, participating in the conduct of, and/or prosecuting and/or defending the
24 Proceeding, and not for any business or other purpose whatsoever.

25 11. Any Party to the Proceeding (or other person subject to the terms of
26 this Stipulation and Protective Order) may ask the Court, after appropriate notice to
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1 the other Parties to the Proceeding, to modify or grant relief from any provision of
2 this Stipulation and Protective Order.

3 12. Entering into, agreeing to, and/or complying with the terms of this
4 Stipulation and Protective Order shall not:

5 a. Operate as an admission by any person that any particular
6 Document, Testimony or Information marked “Confidential” or “Highly
7 Confidential” contains or reflects trade secrets, proprietary, confidential or
8 competitively sensitive business, commercial, financial or personal information; or

9 b. Prejudice in any way the right of any Party (or any other person
10 subject to the terms of this Stipulation and Protective Order) (i) to seek a
11 determination by the Court of whether any particular Confidential Materials or
12 Highly Confidential Materials should be subject to protection under the terms of
13 this Stipulation and Protective Order; or (ii) to seek relief from the Court on
14 appropriate notice to all other Parties to the Proceeding from any provision(s) of
15 this Stipulation and Protective Order, either generally or as to any particular
16 Document, Testimony or Information.

17 13. Any Party to the Proceeding who has not executed this Stipulation and
18 Protective Order as of the time it is presented to the Court for signature may
19 thereafter become a Party to this Stipulation and Protective Order by its counsel’s
20 signing and dating a copy thereof and filing the same with the Court, and serving
21 copies of such signed and dated copy upon the other Parties to this Stipulation and
22 Protective Order.

23 14. Any Information that may be produced by a non-Party witness in
24 discovery in the Proceeding pursuant to subpoena or otherwise may be designated
25 by such non-Party as “Confidential” or “Highly Confidential” under the terms of
26 this Stipulation and Protective Order, and any such designation by a non-Party shall
27 have the same force and effect, and create the same duties and obligations, as if
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made by one of the undersigned Parties hereto. Any such designation shall also function as consent by such producing non-Party to the authority of the Court in the Proceeding to resolve and conclusively determine any motion or other application made by any person or Party with respect to such designation, or any other matter otherwise arising under this Stipulation and Protective Order.

15. If any person subject to this Stipulation and Protective Order who has custody of any Confidential Materials or Highly Confidential Materials receives a subpoena or other process (“Subpoena”) from any government or other person or entity demanding production of such materials, the recipient of the Subpoena shall promptly give notice of the same by electronic mail transmission, followed by either express mail or overnight delivery to counsel of record for the Designating Party, and shall furnish such counsel with a copy of the Subpoena. Upon receipt of this notice, the Designating Party may, in its sole discretion and at its own cost, move to quash or limit the Subpoena, otherwise oppose production of the Confidential Materials or Highly Confidential Materials, and/or seek to obtain confidential treatment of such materials from the subpoenaing person or entity to the fullest extent available under law. The recipient of the Subpoena may not produce any Confidential Materials or Highly Confidential Materials pursuant to the Subpoena prior to the date specified for production on the Subpoena.

16. Nothing in this Stipulation and Protective Order shall be construed to preclude either Party from asserting in good faith that certain Confidential Materials or Highly Confidential Materials require additional protection. The Parties shall meet and confer to agree upon the terms of such additional protection.

17. If, after execution of this Stipulation and Protective Order, any Confidential Materials or Highly Confidential Materials submitted by a Designating Party under the terms of this Stipulation and Protective Order is Disclosed by a non-Designating Party to any person other than in the manner authorized by this

1 Stipulation and Protective Order, the non-Designating Party responsible for the
2 Disclosure shall bring all pertinent facts relating to the Disclosure of such
3 Confidential Materials or Highly Confidential Materials to the immediate attention
4 of the Designating Party.

5 18. This Stipulation and Protective Order is entered into without prejudice
6 to the right of any Party to knowingly waive the applicability of this Stipulation and
7 Protective Order to any Confidential Materials or Highly Confidential Materials
8 designated by that Party. If the Designating Party uses Confidential Materials or
9 Highly Confidential Materials in a non-Confidential manner, then the Designating
10 Party shall advise that the designation no longer applies.

11 19. Where any Highly Confidential Materials, or Information derived
12 therefrom, is included in any motion or other proceeding, the Parties and any
13 involved non-party shall follow the procedures of this Court for filing under seal at
14 [http://www.cacd.uscourts.gov/sites/default/files/documents/Guide%20to%20Efilin](http://www.cacd.uscourts.gov/sites/default/files/documents/Guide%20to%20Efilin%20Sealed%20Docs.pdf)
15 [g%20Sealed%20Docs.pdf](http://www.cacd.uscourts.gov/sites/default/files/documents/Guide%20to%20Efilin%20Sealed%20Docs.pdf). The designation of material as Confidential or Highly
16 Confidential does not automatically entitle a Party to file such material under seal,
17 and good cause to file under seal must be shown by submission of competent
18 evidence via declaration establishing that the material sought to be filed under seal
19 qualifies as confidential, privileged, or otherwise protectable in accordance with
20 L.R. 79-5.

21 20. This Stipulation and Protective Order does not govern the use of
22 Confidential Materials or Highly Confidential Materials at trial, which will be
23 governed by order of the trial judge. The Parties will meet and confer regarding the
24 procedures for use of any Confidential Materials or Highly Confidential Materials
25 at trial and will move the Court for entry of appropriate orders that separately
26 govern the use of Confidential Materials and Highly Confidential Materials at trial.

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1 21. Nothing in this Stipulation and Protective Order shall affect the
2 admissibility into evidence of Confidential Materials or Highly Confidential
3 Materials, or abridge the rights of any person to seek judicial review or to pursue
4 other appropriate judicial action with respect to any ruling made by the Court
5 concerning the issue of the status of any Confidential Materials or Highly
6 Confidential Materials.

7 22. This Stipulation and Protective Order shall continue to be binding after
8 the conclusion of this Proceeding and all subsequent proceedings arising from this
9 Proceeding, except that a Party may seek the written permission of the Designating
10 Party or may move the Court for relief from the provisions of this Stipulation and
11 Protective Order. To the extent permitted by law, the Court shall retain jurisdiction
12 to enforce, modify, or reconsider this Stipulation and Protective Order, even after
13 the Proceeding is terminated.

14 23. Upon written request made within thirty (30) days after the settlement
15 or other termination of the Proceeding, the undersigned Parties shall have thirty (30)
16 days to either (a) promptly return to counsel for each Designating Party all
17 Confidential Materials and Highly Confidential Materials, and all copies thereof
18 (except that counsel for each Party may maintain in its files, in continuing
19 compliance with the terms of this Stipulation and Protective Order, all work
20 product, and one copy of each pleading filed with the Court and one copy of each
21 deposition together with the exhibits marked at the deposition), (b) agree with
22 counsel for the Designating Party upon appropriate methods and certification of
23 destruction or other disposition of such materials, or (c) as to any Documents,
24 Testimony or other Information not addressed by sub-paragraphs (a) and (b), file a
25 motion seeking a Court order regarding proper preservation of such Materials. To

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1 the extent permitted by law the Court shall retain continuing jurisdiction to review
2 and rule upon the motion referred to in sub-paragraph (c) herein.

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4 **GOOD CAUSE APPEARING, IT IS SO ORDERED.**

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6 DATED: December 12, 2018

7 /S/ Frederick F. Mumm
8 FREDERICK F. MUMM
9 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____ [NAME],
_____, [POSITION AND
EMPLOYER], am about to receive Confidential Materials and/or Highly
Confidential Materials supplied in connection with *Jalinski Advisory Group, Inc. v.
Financial Architects, Inc. and Larry Steinberg*, No. 18-cv-06828 (SVW) (C.D.
Cal.) (the “Proceeding”). I certify that I understand that the Confidential Materials
and/or Highly Confidential Materials are provided to me subject to the terms and
restrictions of the Stipulation and Protective Order filed in this Proceeding. I have
been given a copy of the Stipulation and Protective Order; I have read it, and I agree
to be bound by its terms.

I understand that the Confidential Materials and Highly Confidential
Materials, as defined in the Stipulation and Protective Order, including any notes
or other records that may be made regarding any such materials, shall not be
Disclosed to anyone except as expressly permitted by the Stipulation and
Protective Order. I will not copy or use, except solely for the purposes of this
Proceeding, any Confidential Materials or Highly Confidential Materials obtained
pursuant to this Stipulation and Protective Order, except as provided therein or
otherwise ordered by the Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential
Materials and Highly Confidential Materials provided to me in the Proceeding in a
secure manner, and that all copies of such materials are to remain in my personal
custody until termination of my participation in this Proceeding, whereupon the

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copies of such materials will be returned to counsel who provided me with such materials.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this _____ day of _____, 20____, at _____.

DATED: _____

BY: _____

Signature

Title

Address

City, State, Zip

Telephone Number